

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

FIFTH THIRD BANK,
NATIONAL ASSOCIATION,

Defendant.

Case No. 1:21-cv-00262 (DRC)

AFFIDAVIT OF BEN MENDELSON

I, Ben Mendelsohn, attest as follows, based on my personal knowledge:

1. I am a Senior Vice President, Director of Product Management at Fifth Third Bank (“Fifth Third” or “Bank”). I have had this role since 2018.

2. I submit this affidavit in support of Fifth Third’s Answer in the above-captioned matter.

3. Online banking, Early Access (called “EAX” for short), and overdraft protection are services and products managed by or administered in coordination with my team. The name of the EAX product has changed over time, but I will refer to all iterations as “EAX” for simplicity. I am personally familiar with these products and services.

I. Online Banking

4. Online banking is a platform by which Fifth Third customers may access their accounts. Fifth Third offers online banking for the convenience of our customers. Without it, customers would have to visit a retail branch, call the Bank, or use an ATM in order to access their accounts. Enrollment in and use of online banking is completely free to the customer.

II. EAX

5. EAX is available to the Bank's checking account customers who receive regular direct deposits into their accounts. It gives such customers the option of taking an advance on the direct deposit. Enrollment is free and has no impact on a customer's credit. Neither EAX enrollment nor EAX advances were furnished to consumer reporting agencies. Customers incur fees only if they initiate an advance, which cannot be done without their express knowledge and consent, as it requires a separate, affirmative request from the customer and a separate agreement to the key terms and conditions.

6. To demonstrate this, I have attached Exhibit A, which is a set of screenshots from the Bank's online banking platform for a hypothetical customer who was enrolled in EAX. The platform clearly alerted customers in multiple places of their enrollment. For example, I have circled in red the location on a customer's home screen where it listed EAX in the accounts overview and where any EAX transactions were listed within the relevant checking account details page. Ex. A at 1–2. To initiate an advance, the customer had to click through multiple pages, manually enter an advance amount, and confirm agreement to the key terms and conditions. I have circled in purple the various buttons the customer would have had to click and the place where the customer would have had to specify the desired advance amount. Specifically, the customer had to click on the "Initiate Advance" button on either the home screen or EAX page. Ex. A at 1, 3. This directed the customer to a webpage explaining the finance charge and repayment terms. The customer had to enter the amount of the advance and click "Next." Ex. A at 4. The next page provided a transaction summary displaying the amount of the advance and the exact fee. The customer had to click "Finish" to complete the transaction. Ex. A at 5. The terms and conditions were available to the customer at each step. I have marked in blue the eight places where the terms and conditions and additional information were disclosed. Ex. A at 3–6.

III. Overdraft Protection

7. Overdraft protection is a service available for checking accounts that allows transactions exceeding the balance in the checking account to be approved. Without overdraft protection, if a customer overdraws the balance of a checking account, the customer is assessed an overdraft fee, which is currently \$37 per transaction. The customer may be assessed other fees as well for the returned payment, by the institution owning the account to which the funds were intended to be transferred or the biller to whom they attempted payment. With overdraft protection, the customer's checking account is linked to an eligible Fifth Third savings, checking, line of credit, or credit card account. If the customer overdraws the balance of the checking account, the overdraft protection service automatically transfers funds from the customer's linked account, thereby allowing the customer to avoid the overdraft fee and possibly other fees.

8. Enrolling in overdraft protection was and remains completely free and has no impact on a customer's credit. Customers incur a fee only if overdraft protection is actually utilized (i.e., if the customer's checking account is overdrawn and a transfer is successful in covering one or more items in the overdraft). In that case, the customer may incur up to a \$12 transfer fee per transaction (only one per day). For certain accounts, there is no fee at all. This allows the customer to save money because they pay zero to \$12 instead of \$37 per item. At any point and at no cost, customers can change how their account is protected or remove overdraft protection altogether.

Executed: June 15, 2021

Ben Mendelsohn